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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 545/2013

Decision adopted by the Committee at its fifty-sixth session (9 November-9 December 2015)

Submitted by:	Z (not represented by counsel)
Alleged victim:	The complainant
State party:	Switzerland
Date of complaint:	30 July 2013 (initial submission)
Date of present decision:	25 November 2015
Subject matter:	Deportation to Armenia
Substantive issues:	None
Procedural issues:	Admissibility –incompatibility
Articles of the Convention:	Articles 3 and 22 (2)

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-sixth session)

concerning

Communication No. 545/2013*

Submitted by:	Z (not represented by counsel)
Alleged victim:	The complainant
State party:	Switzerland
Date of complaint:	30 July 2013 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 25 November 2015,

Having concluded its consideration of complaint No. 545/2013, submitted to it by Z under article 22 of the Convention,

Having taken into account all information made available to it by the complainant and the State party,

Adopts the following:

Decision under article 22 (7) of the Convention

1.1 The complainant is Z, a national of Armenia born on 9 August 1975 and residing in Switzerland. He claims that his deportation to Armenia would constitute a violation by Switzerland of article 3 of the Convention. The complainant is a lawyer and is self-represented.

1.2 On 11 November 2013, the communication was registered and the Committee requested the State party, pursuant to rule 114, paragraph 1, of its rules of procedure, not to remove the complainant to Armenia while the complaint was being considered. On 3 July 2014, the Committee granted the State party's request to split the consideration of the admissibility and merits of the communication, on the ground that the complainant had left the State party's territory. However, on 2 February 2015, the complainant informed the Committee that he had returned to Switzerland. Thereafter, the State party submitted further observations on both admissibility and the merits.

* The following members of the Committee participated in the consideration of the present communication: Essadia Belmir, Alessio Bruni, Satyabhoosun Gupt Domah, Abdoulaye Gaye, Sapana Pradhan-Malla, Jens Modvig, George Tugushi and Kening Zhang.

Facts as presented by the complainant

2.1 The complainant asserts that he was persecuted by the National Secret Service (NSS) of Armenia because of his political views, his advocacy activities in support of opponents of the political regime, and his former employment with NSS. He claims that he was beaten several times in the street by strangers who accused him of collaborating with the opposition and failing to obey law enforcement authorities. The complainant claims that he underwent surgery as a result of one such attack, and that on another occasion he was beaten so brutally that 16 of his teeth were knocked out. He maintains that NSS agents tortured and harassed him several times in order to keep him away from the opposition, fearing that he would use inside information about NSS operations, intelligence-gathering methods and undercover agents against the Armenian authorities.

2.2 The complainant contends that NSS employees continue to be monitored after separating from the organization and that NSS is undoubtedly aware of his reasons for coming to Switzerland. He claims that, while employed by NSS, he personally witnessed its agents subject many victims to unlawful detention, harassment and torture. Such acts included introducing a gun into the mouth of a victim, striking the heels of a victim's feet with a stick, keeping a victim in a humid and dark underground cabin without food, and threatening a victim's spouse and children. The complainant further alleges that most of those victims were innocent and were later released, but never disclosed what had happened to them out of fear.

2.3 The complainant alleges that he is considered a traitor by NSS because he sued the Armenian police for unlawful acts in 2008, after leaving the Service. He asserts that NSS discovered that in 2011 he had lodged an application before the European Court of Human Rights concerning a decision rendered by the Armenian courts. Thereafter, he was allegedly the target of a "new wave of threats and repressions (including physical harassment and offences)". The complainant refers to the case of an unnamed school director whom NSS suspected of having been recruited by foreign secret service agencies during a five-month stay in the United States of America. The complainant alleges that, on the basis of that suspicion alone, NSS subjected the school director to psychological and physical harassment for seven or eight months, after which time he was released due to a lack of evidence.

2.4 On 29 May 2013, the Federal Office for Migration of Switzerland denied the complainant's application for asylum. According to the decision, the Office found that the evidence the complainant had provided did not support his arguments; he was not credible; and he posed no threat to the Government of Armenia, because he had stated that he did not belong to an opposition party and did not have a public profile. Moreover, the complainant had stated that he had travelled to the Russian Federation three times in 2010 without experiencing harassment or other problems upon leaving or entering Armenia. He had also travelled to Georgia in 2011 without problem, and through the Yerevan airport to Switzerland without any difficulty in July 2011. Regarding a dental record indicating that several of the complainant's teeth had been "restored", the Office observed that the record did not state the cause of the dental problem, and did not explain what the restoration treatment had entailed. Similarly, the Office considered that an undated medical certificate attesting to an operation undergone by the complainant did not indicate the cause of the treatment and therefore did not support his allegations that he had been beaten. Moreover, the Office considered that a letter provided by the complainant, in which five Armenian individuals claimed that the complainant had been a victim of persecution, was a courtesy letter with low probative value. It further considered that the death certificate for the complainant's father that he had also provided indicated that his father had died in an accident and not as a result of murder, as the complainant alleged. Concerning the letter from the European Court of Human Rights stating that the complainant had lodged an

application against Armenia, the Office found that the letter did not contain any statement regarding the admissibility or merits of the complainant's claims. Moreover, the letter was of dubious authenticity because it lacked the Court's stamp, did not feature the recipient's address on the envelope and had been sent through the Swiss postal service even though the Court was located in France and the complainant was in Armenia at the relevant time. Regarding the documents the complainant had submitted to establish that a criminal case had been opened against him in Armenia, the Office found that the documents were not official, as they had not been stamped by the issuing authority, and were copies as opposed to originals. In addition, the documents did not refer to any concrete evidence concerning the complainant's asylum-related allegations. The documents also indicated that the criminal proceedings against the complainant had been terminated after one month due to a lack of evidence. The documents were therefore considered to be of low probative value. The Office further considered that the political situation in Armenia did not provide a basis for non-refoulement. It also considered that the complainant and his wife were in good health and had substantial professional training, work experience and family connections in Armenia that would allow them to rebuild their lives there. On 28 October 2013, the Federal Administrative Court denied the complainant's appeal of the decision not to grant him asylum.

2.5 In a further submission to the Committee dated 7 November 2013, the complainant asserts that his friend G, who lives in Armenia, threatened to harm him. The complainant claims that on 17 September 2011, two days before his escape from Armenia, G lent him $25,000 to help him settle in Switzerland. The loan agreement stipulated that the amount was to be repaid after three years, but that if the complainant were able to repay it earlier, G would have the right to demand repayment at that time. The complainant claims that he spent $3,000 of that amount and, when he arrived in Switzerland (at a refugee reception centre in Vallorbe), an official from the Federal Office for Migration confiscated the remaining $22,000. The complainant alleges that, despite his objections, the official kept the money and persuaded the complainant to declare half of the amount in his name, and the other half in his wife's name. The complainant asserts that, although the official informed him that the amount would be returned to him at the end of the asylum process, that never occurred. The complainant also argues that, although he submitted a written request for restitution to the Federal Office for Migration, the Office informed him that it would never return his money to him. The complainant maintains that G has been demanding repayment for the past two years and constantly threatens to harm him.

2.6 In addition, the complainant submits that the authorities of the State party are indifferent to violations of basic human rights. He reiterates that he would be at risk of ill-treatment in Armenia and claims that on 6 November 2013 police officials beat and arrested peaceful political protesters in central Yerevan. He also claims that unsuccessful asylum seekers recently removed by the State party to Sri Lanka are being tortured in prisons there.

2.7 On 16 February 2014, the complainant informed the Committee that he had moved from Switzerland to Germany on 15 February 2014 because, as of 1 December 2013, he and his family were no longer entitled to social assistance and had been asked by the Swiss authorities to vacate their apartment.

The complaint

3.1 The complainant asserts that the State party would violate his rights under article 3 of the Convention by forcibly removing him to Armenia, where he would be imprisoned and subjected to torture, inhuman treatment and harassment by NSS. The complainant maintains that he would be targeted due to his political views, his advocacy for opponents of the ruling party, and his former employment with NSS. He submits that NSS agents

tortured and harassed him several times in order to keep him away from the opposition, out of fear that he would use inside information about NSS operations, intelligence-gathering methods and undercover agents against the Armenian authorities. He maintains that he has seen NSS agents subject innocent people to ill-treatment, and that NSS does not serve the Government and its people, but rather the oligarchs who hold power in Armenia. He also submits that, if he returns to Armenia, his punishment will include the ill-treatment of his family members.

3.2 The complainant maintains that the decision of the Federal Administrative Court was procedurally flawed because the deciding judge, who has repeatedly expressed negative opinions about asylum seekers and foreigners in general, was biased. The complainant also asserts that the Court failed to consider information from reliable sources, such as the organization Human Rights in Armenia, indicating that NSS and police officials in Armenia routinely torture and murder individuals and are part of a totalitarian and unlawful regime.

3.3 The complainant also argues that the State party's authorities should have considered the adverse effects that removal to Armenia would have on his children's mental health, development and future.

State party's observations on admissibility

4. In its observations dated 14 March 2014, the State party states that it considers the communication inadmissible as manifestly ill-founded, because the complainant moved from Switzerland to Germany on 15 February 2014. Unsuccessful asylum applicants in Switzerland receive emergency aid under article 12 of the Federal Constitution. Such emergency aid replaces the social aid that was available before 1 January 2008. Article 12 of the Constitution provides that anyone in a situation of distress and without means of subsistence has the right to receive aid to cover basic subsistence needs in a manner consistent with the requirements of human dignity. The fundamental right to basic living conditions under article 12 does not guarantee a minimum income, but does ensure that basic survival needs, including food, housing, clothing and basic medical care, are met. The State party considers that the complainant could have requested such aid and remained in the country, but did not do so and instead took a voluntary and autonomous decision to leave Switzerland. As such, he cannot be removed to Armenia by the State party, and article 3 of the Convention does not apply. Accordingly, the communication is moot.

Complainant's comments on the State party's observations

5.1 In his submission dated 19 June 2014, the complainant asserts that his move to Germany does not render the communication inadmissible. He maintains that: (a) his residency in Germany is connected to his wife's employment there, and he may therefore have to leave when her contract expires; (b) he is not eligible to seek international protection in Germany because the State party bears responsibility for his asylum claim under European regulations; (c) the Swiss authorities forced him to leave his apartment and threatened to send him back to a centre for asylum seekers; and (d) his children are not adapting to life in Germany.

5.2 On 2 February 2015, the complainant informed the Committee that he had moved back to Switzerland from Germany. He stated that, because his daughters had experienced difficulty in adapting to life in Germany, his wife had sought and found employment as a doctor in a medical clinic in Switzerland.

State party's additional observations on admissibility and the merits

6.1 In its submission dated 22 April 2015, the State party provides further information on the complainant's asylum proceedings. On 5 May 2011, the complainant presented an asylum application at the embassy of Switzerland in Yerevan. On 30 July 2011, the Federal Office for Migration determined that he should be allowed to enter Switzerland in order to pursue his application. On 19 September 2011, the complainant entered Switzerland and filed a formal asylum application. During proceedings before the Office, two oral hearings were held, on 29 September 2011 and 24 January 2012; the complainant was present at both. The complainant states that on 15 February 2014 he left Switzerland voluntarily because of his wife's employment; he returned on 25 January 2015 and his wife began working at a clinic in the canton of Aargau.

6.2 The State party considers the communication to be inadmissible ratione materiae because the complainant is not at risk of being removed to another country. On the basis of his wife's employment, the complainant obtained a short-stay L permit. This family-reunification permit allows the complainant to stay and seek employment in Switzerland until 23 January 2016. As such, article 3 of the Convention is not applicable.

6.3 The State party further considers the communication inadmissible because the complainant has failed to exhaust domestic remedies. He may apply for an extension of his L permit for a total period of up to two years, and may also appeal a decision denying the extension of his permit during that period.

6.4 The State party also considers that the communication is inadmissible as manifestly ill-founded and that it is without merit, because the complainant has not shown that he would face a real, foreseeable and personal risk of being subjected to torture if returned to Armenia. The State party acknowledges that the general human rights situation in Armenia raises certain concerns. Specifically, according to the concluding observations of the Committee on the third periodic report of Armenia[1] and to reports of non-governmental organizations and the United States Department of State,[2] there are concerns that torture may be inflicted by State authorities on those held in custody in Armenia, and that torture victims may refrain from seeking redress due to a fear of reprisals. The State party notes, however, that the Federal Administrative Court stated in its decision that there was no situation of generalized violence in Armenia, and that there was no concrete indication that the complainant would be threatened if he returned there. The general human rights situation in Armenia is in and of itself insufficient to establish that the complainant would face a real, foreseeable and personal risk of harm if returned there.

6.5 The State party further considers that the complainant's claims of having been pursued and tortured by NSS are implausible. The Federal Office for Migration found that, on several occasions, the complainant had provided imprecise details concerning the incidents during which he had been threatened or mistreated, and concerning the dates on which those incidents had occurred. In addition, the Office found that the medical reports presented by the complainant did not specify the causes of his condition, and that the confirmation letter signed by five Armenian nationals appeared to be a letter of convenience. The Federal Administrative Court found that the complainant was not credible, and that the medical treatment he had undergone was not the result of ill-treatment, as he alleged. Moreover, although the complainant argues that he was

[1] The State party cites CAT/C/ARM/CO/3, paras. 8, 12, 14 and 16.

[2] The State party cites, inter alia, United States Department of State, "Country reports on human rights practices for 2013: Armenia", p. 4 (available from www.state.gov/documents/organization/220461.pdf); and Human Rights Watch, *World Report 2015*, chapter on Armenia (available from www.hrw.org/world-report/2015/country-chapters/armenia).

persecuted due to his political opinions, the Court noted that he did not allege that he belonged to a political party but merely claimed to have supported the Armenian National Assembly. The Court further noted that his alleged political activities (defending members of the opposition who had been arrested, participating in demonstrations and sharing political ideas with acquaintances) did not render him a serious danger to the Armenian authorities. Furthermore, the Court considered the complainant's declarations concerning his activities as a lawyer for a member of the opposition to be unconvincing. The complainant made contradictory statements concerning the name of an opposition member whom he allegedly defended at a police station. That was all the more surprising given that, according to the Court, there was a confrontation with the police during which members of the opposition were arrested; lawyers subsequently took up their defence. If the complainant had worked as a rights defender, he would have been able to remember those events in detail, and would have been able to obtain evidence with the help of the other lawyers. Nothing in the complainant's account indicates that he would be arrested or tortured on account of his political beliefs if he returned to Armenia.

6.6 The State party also considers that, according to the domestic authorities, the complainant's statements featured a high number of factual inconsistencies. For example, the complainant claimed alternately that he was being persecuted due to his support for the opposition and that his persecution was a result of his employment with NSS. Also, if the Armenian authorities had an interest in persecuting the complainant, he would not have been able to leave and return to Armenia repeatedly without encountering problems. Similarly, if he had been threatened, his departure to Switzerland would not have been possible. Moreover, nothing suggests that the Armenian authorities are persecuting the complainant as a result of the alleged application he lodged before the European Court of Human Rights. Armenia has ratified the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and therefore implicitly accepts the Court's competence to examine applications against it. Although the complainant disputes the decision of the Federal Administrative Court, he does not address the Court's reasoning. Further, his reference to the removal of individuals to Sri Lanka is irrelevant, since he is not facing removal to Sri Lanka.

6.7 In addition, the State party considers as baseless the complainant's claim that removal of his children to Armenia would constitute inhuman treatment. Given that his children are of a young age and are well integrated in Switzerland, a country whose languages they were unable to speak upon arrival, it is not believable that they would have serious problems integrating in their country of origin. The communication does not present any new facts or evidence that could justify reversal of the domestic decisions.

Complainant's further comments

7.1 In his submission dated 29 June 2015, the complainant asserts that, if his wife loses her job, their short-term L residence permit will be cancelled. That permit is renewable on a yearly basis with the sponsorship of his wife's employer. The complainant claims that, although his wife does not face a "material" risk of losing her job, on account of the high demand for doctors in Switzerland, her continued employment is not guaranteed. The complainant states the following:

> I would accept the arguments and would agree to withdraw my petition provided [that the] Swiss authorities could guarantee that we will be able to stay in Switzerland with a certain residence permit in case my wife loses her job and the connected work residence permit. On the contrary, if such a guarantee is not feasible, I request to accept my petition for further consideration on the basis of the arguments I raised previously.

7.2 The complainant further maintains that violence, repression and corruption are prevalent in Armenia. The complainant asserts that, on 1 March 2008, armed forces, police and criminals killed 10 peaceful protestors upon the orders of government authorities, that nothing has changed since then and that those in power continue to murder, arrest and violate the rights of their opponents. The complainant also claims that, during a peaceful assembly in June 2015 organized to protest an increase in electricity rates, the authorities arrested 237 people by using violent force. According to several sources, police officials and other individuals who were possibly affiliated with the police and "sponsored criminal groups" beat protestors and journalists at the scene of that protest, and destroyed journalists' video recorders.[3] Soon, the Armenian authorities will again use force against protestors who are arrested for their civil or political views.[4]

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22 (5) (a) of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement.

8.2 The Committee takes note of the State party's argument that the communication is inadmissible ratione materiae because, as the complainant acknowledges, he has a short-term residence permit in Switzerland and is not currently at risk of being removed by the State party to Armenia. Nevertheless, the Committee notes the complainant's argument that the permit he and his wife currently have is linked to her employment and may be withdrawn if she loses her job. The Committee considers, however, that under article 3 of the Covenant, a complainant cannot be entitled to protection under a particular legal status such as asylum if such protection can instead be guaranteed through other kinds of legal arrangements. In the present case, the Committee observes that, having obtained a residence permit, the author is no longer at risk of removal. The question regarding the duration of his wife's employment and the residence permit linked to it is hypothetical at this stage and cannot constitute a basis for finding the communication admissible. Accordingly, the Committee considers that, because the complainant is not presently at risk of being removed to Armenia by the State party, the communication is incompatible with the provisions of the Convention and is therefore inadmissible under article 22 (2) of the Convention.[5]

8.3. The Committee therefore decides:

(a) That the communication is inadmissible;

(b) That this decision shall be communicated to the complainant and to the State party.

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[3] The complainant cites "18 people affected during Yerevan police crackdown of sit-in", *News.am*, 23 June 2015. Available from http://news.am/eng/news/273216.html.

[4] The complainant states that this claim is supported by current events regarding tensions in Armenia.

[5] See communication No. 264/2005, *A.B.A.O. v. France*, decision adopted on 8 November 2007, para. 8.4. In the light of its findings, the Committee does not deem it necessary to examine the State party's assertions that the communication is inadmissible as manifestly ill-founded or due to lack of exhaustion of domestic remedies.